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ITEM NO.35

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 226 OF 2012

A.K.SAMANTRAY

Petitioner(s)

VERSUS

STATE OF ORISSA & ANR

Respondent(s)

(With appln(s) for stay and vacating stay and permission to file additional documents and office report)

Date: 02/11/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s) Mr. Ashok Panigrahi, Adv.
Mr.Surajit Bhaduri, Adv.

For Respondent(s) Ms.Indira Jaising, ASG
Mr. Radha Shyam Jena, Adv.
Ms.Sonam Anand, Adv.

UPON hearing counsel the Court made the following
O R D E R

In this petition filed under Article 32 of the Constitution, the petitioner has made the following substantive prayers:

"a) issue a writ of certiorari or any other appropriate writ quashing the impugned notifications (vide Annexures P-12, Pages 161 to 164 and P-13, Pages 165 to 168) inasmuch as the same is in the teeth of the directions passed by this Hon'ble Court in the matter of State of U.P. Versus Jeet Singh Bisht, reported in (2004) 11 SCC 352 wherein it was held that an enquiry into the complaint against the "President" of the State Consumer Commission has to be done by a retired or sitting Chief Justice of the High Court;

b) issue a writ of Mandamus, directing the State Government to show cause as why the impugned notifications (vide Annexures P-12, Pages 161 to 164 and P-13, Pages 165 to 168) shall not be quashed and consequentially be set aside since the same is contrary to the law laid down by this Hon'ble Court in State of U.P. v. Jeet Singh Bisht, (2004) 11 SCC 352;

c) declare that said sub-rule (5) of Rule (6) of the Orissa Consumer Protection Rules, 1988 insofar as it concerns the President of the State Commission as illegal and ultra vires the Consumer Protection Act, 1986 in as much as the same is beyond the scope and ambit of the Rule making power bestowed in the State Government under sub-section (2) of the Section 30 of the Consumer Protection Act, 1986;

d) declare the impugned notifications (vide Annexures P-12, Pages 161 to 164 and P-13, Pages 165 to 168) issued by the State Government as violative of Article 14 of the Constitution of India in so far as the Petitioner is concerned since the same is in violation of the procedure established by law."

In the counter affidavit filed on behalf of respondent No.1,

several objections have been taken to the very maintainability of the writ petition including the one that the petitioner can file a petition under Article 226 and/or 227 of the Constitution.

In our view, the writ petition is liable to be dismissed because the notification impugned therein does not result in violation of any of the fundamental rights guaranteed to the petitioner under Part-III of the Constitution and the petitioner can avail an effective remedy by filing a petition under Article 226 of the Constitution.

The writ petition is accordingly dismissed with liberty to the petitioner to avail remedy by filing a petition under Article 226 of the Constitution.

The interim order passed by this Court on 24.5.2012 stands automatically vacated.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master